



**IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL DIVISION, PIETERMARITZBURG**

NOT REPORTABLE
CASE NO: 1985/13

In the matter between:

INTUTHUKO TAXI ASSOCIATION

Applicant

and

KWAZULU-NATAL PROVINCIAL REGULATORY
ENTITY

First Respondent

ARCHBISHOP S N NZUMALO

Second Respondent

P F FAKUDE

Third Respondent

L DUBE

Fourth Respondent

T TENZA

Fifth Respondent

MEC FOR TRANSPORT, KZN

Sixth Respondent

MASIHAMBISANE BARA BUFFALO TAXI
ASSOCIATION

Seventh Respondent

ORDER

- (a) The application is dismissed with costs, such costs to include the costs of two counsel.

- (b) The applicant is further directed to pay all costs previously reserved as well as the wasted costs occasioned by the removal of the opposed application on 24 March 2017, such costs to include the costs of two counsel.

JUDGMENT

SEEGOBIN J

[1] This is a review application brought in terms of the provisions of Rule 53 of the Uniform Rules. The applicant, a taxi association, seeks to review and set aside a decision taken by the first to sixth respondents (the respondents) on 8 October 2012 in terms of which a taxi route from Anneville to Newcastle, registered in the name of the applicant, was withdrawn by the respondents. The application was opposed by the respondents who put up extensive answering affidavits in which they, *inter alia*, challenged the competence of the relief sought. While the seventh respondent, a competing taxi association, did not initially oppose the application, it nonetheless took steps to instruct counsel to appear at the opposed hearing on 14 November 2017 to merely record its attitude to the application.

[2] At the outset I point out this is not the first review application that has been brought by the applicant for substantially the same, if not similar relief against the first respondent. The previous applications brought under case numbers 1003/11, 7737/12 and 6844/13 were either withdrawn by the applicant and/or proved to be unsuccessful. The judgment by my colleague Nkosi J in the previous application under case number 6844/13 is particularly instructive as it highlights the extreme abuse on the part of the applicant relating to the process of this court. The history of the litigation embarked upon by the applicant has been dealt with sufficiently in that judgment and I see no need to repeat same herein. Needless to say, the application under case number 6844/13 was dismissed by Nkosi J with a punitive order as to costs.

[3] Turning to the present application it is common cause that the decision taken by the respondents on 8 October 2012 is an administrative one which falls within the ambit of the Promotion of Administrative Justice Act 3 of 2000 (PAJA). It is also common cause that pursuant to the decision taken by the respondents on 8 October 2012 the applicant lodged an appeal with the Transport Appeal Tribunal (the Appeal Tribunal) established in terms of the Transport Appeal Tribunal Act 39 of 1998 (The Tribunal Act). The appeal in question was lodged pursuant to the provisions of section 92 of the National Land Transport Act 5 of 2009 (the NLTA) which came into effect on the 8th

December 2009. It is further common cause that the applicant withdrew its appeal before the Appeal Tribunal before it could be finalised.

[4] The main challenge to the present application is that the applicant has failed to exhaust its internal remedies which it was statutorily obliged to do before seeking any redress in the High Court. Mr *Padayachee SC*, who appeared on behalf of the respondents together with Ms *Nursoo*, contended strongly that the applicant was simply barred from pursuing any relief in this court by virtue of its failure to exhaust its internal appeal remedy before the Appeal Tribunal. Mr *Mashava*, who appeared on behalf of the applicant, argued that the applicant was not hit by the provisions of section 92(1) of the NLTA as it was neither the holder of any operating licence or permit nor was it affected by the decision. As I shall show hereunder, this argument is without any merit.

[5] Chapter 8 of the NLTA deals with appeals. Section 92(1) provides as follows:

'92. Appeals to Transport Appeal Tribunal –

(1) The following persons may appeal to the Transport Appeal Tribunal against an act, direction or decision of an entity that has granted or refused an application relating to an operating licence, in the manner and within the time prescribed:

(a) The aggrieved applicant;

(b) the holder of any operating licence or permit affected by the decision; or

(c) any other person interested in or affected by the decision.⁷

(my emphasis)

[6] Section 7(2) of PAJA provides as follows:

(a) Subject to paragraph (c), no court or tribunal shall review an administrative action in terms of this Act unless any internal remedy provided for in any other law has first been exhausted.

(b) Subject to paragraph (c), a court or tribunal must, if it is not satisfied that any internal remedy referred to in paragraph (a) has been exhausted, direct that the person concerned must first exhaust such remedy before instituting proceedings in a court or tribunal for judicial review in terms of this Act.

(c) A court or tribunal may, in exceptional circumstances and on application by the person concerned, exempt such person from the obligation to exhaust any internal remedy if the court or tribunal deems it in the interest of justice.

[7] In *Nichol & Another v Registrar of Pension Funds & Others*¹, Van Heerden JA said the following with regard to the provisions of s7(2) of PAJA:

¹ 2008(1) SA 383 (SCA) at para [15]

‘[15] Under the common law, the mere existence of an internal remedy was not, by itself, sufficient to defer access to judicial review until the remedy had been exhausted. Judicial review would in general only be deferred where the relevant statutory or contractual provisions, properly construed, required that the internal remedies first be exhausted. However, as is pointed out by Iain Currie and Jonathan Klaaren, ‘by imposing a strict duty to exhaust domestic remedies, [PAJA] has considerably reformed the common law’. It is now compulsory for the aggrieved party in all cases to exhaust the relevant internal remedies unless exempted from doing so by way of a successful application under s7(2)(c). Moreover, the person seeking exemption must satisfy the court of two matters: first, that there are exceptional circumstances, and second, that it is the interest of justice that the exemption be given.’

(my emphasis)

[8] It follows from the above that the applicant, while not being an entity which is the holder of any operating licence or permit affected by the decision (ss92(1)(b)), can certainly be categorised as being an aggrieved party (ss92(1)(a)) or a party ‘interested in or affected by the decision’ (ss92(1)(c)). In my view, if the applicant, which is a voluntary association whose membership is made up of a number of taxi operators and whose existence is dependent on such membership, cannot be construed as being a party falling within the provisions of either ss92(1)(a) or 92(1)(c) above, then it begs the question as to why the applicant is challenging the decision taken on 8 October 2012 in the first place.

[9] I accordingly conclude that there is merit in the preliminary point raised by the respondents and on which this application falls to be decided. Unlike *Nichols, supra*, this is not a case in which the applicant, by virtue of exceptional circumstances or in the interests of justice, seeks an order exempting it from its obligations to exhaust its internal remedies before instituting review proceedings in terms of PAJA. It follows, in my view that this application was doomed to fail from the outset and must be dismissed.

[10] As far as the issue of costs is concerned, I see no reason why the respondents should be deprived of their costs. I consider that the employment of two counsel was justified given the nature and complexity of the issues that arose and their importance to the parties concerned. I also see no reason why the respondents should not be entitled to claim all their reserved costs as well as the costs of the previous opposed hearing which could not proceed due to a failure on the part of the applicant to comply fully with its obligations in terms of the uniform rules and the practice directive of this division.

Order

[11] The order I make is the following:

- (a) The application is dismissed with costs, such costs to include the costs of two counsel.

- (b) The applicant is further directed to pay all reserved costs as well as the wasted costs occasioned by the removal of the opposed application on 24 March 2017, such costs to include the costs of two counsel.

SEEGOBIN J

COUNSEL FOR THE APPLICANTS:	Mr Mashava (Instructed by Mashamba Attorneys)
COUNSEL FOR THE 1 st to 6 th RESPONDENTS:	Mr Padayachee SC with Ms Nursoo (Instructed by Diedricks Attorneys)
DATE OF HEARING:	14 November 2017
DATE OF JUDGMENT:	17 November 2017